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Democracy Is Still at Odds With Intelligence Agencies

By ALLAN E. GOODMAN

Are intelligence operations compatible with democracy?

The answer is probably negative. That is why for most of our history the United States has avoided permanent intelligence agencies, preferring to dismantle wartime spying operations rather than risk having them evolve into a secret police. The CIA itself was created only in 1947 and only after heated debate about whether in peacetime it would become, as one critic at the time said, "an American Gestapo."

The issue of secrecy versus democracy is once again at the heart of recent controversy over whether NBC News and the Washington Post should be prosecuted for stories they carried that, according to the government, may have disclosed information about highly sensitive intelligence operations.

CIA Director William J. Casey wants to take legal action against the media for their coverage of the trial of Ronald W. Pelton—a former employee of the National Security Agency, which collects intelligence on other countries' diplomatic and military communications. Pelton apparently told the Soviets all that he knew. The press wants to report what Pelton is alleged to have said; the CIA wants to keep some of this information from the public. And Casey has used the threat of a 1950 law, which makes it a crime to publish information derived from classified communications intelligence, to dissuade the Post from printing the whole story.

The law grew out of an episode before World War II in which the U.S. government wanted to prevent the former head of its cryptographic intelligence services from publishing a book about his experiences, and subsequent concern that without a specific statute other government employees involved in code breaking might also be tempted to reveal what they know.

But since no news organization has been prosecuted under the law, the legitimacy of this restraint on freedom of the press has not been tested. And I think that it would fail to stand up in court today, largely because it does not require the government to prove that any damage has been done to national security—only that the information published was derived from communications intelligence, even if such information had been published elsewhere.

The issue probably will not make it to

court in the current dispute because, after meeting with Casey, the media have agreed not to disclose some of the details about the communications intelligence system Pelton compromised by selling his information to the Soviet Union.

There is good news and bad news in this outcome. The good news is that the press, when presented with the government's arguments for remaining quiet, has again chosen to bend over backward to accommodate intelligence officials' concerns and still report on intelligence activities—a legitimate news subject in a democracy. The bad news is that the leadership of the U.S. intelligence community continues to act as though the best way to protect the nation's secrets is to intimidate the press when it criticizes intelligence activities.

Casey probably would not have threatened to take legal action if the stories in question had been about an intelligence success rather than a failure. For example, apparently no one will be prosecuted for publication of the details of how the United States intercepted Libyan communications with the terrorist agents who bombed a West German discotheque frequented by U.S. soldiers.

One of the key differences between operating in a democracy as opposed to a dictatorship is that intelligence agencies must be consistent: They cannot demand that only information that reflects badly on them be kept secret. Certainly the government should have a means of punishing those, including government officials, who expose legitimate classified material. But resorting to laws of questionable constitutionality and applicability is a poor way to go about it.

Thus this most recent episode again raises the issue of whether the intelligence community should operate under a comprehensive charter rather than a series of executive orders and Cold War-era statutes. Part of the function of such a charter would be to define the power of the government to punish those who sell, expose or leak secrets. Without such a charter, the tensions between the intelligence community and our democratic system will only increase.

Allan E. Goodman is associate dean at the School of Foreign Service at Georgetown University.